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OLL 84-4740
17 December 1984

MEMORANDUM FOR: See Distribution

VIA: Chief, Liaison Division/OLL

FROM:

[Redacted]

Liaison Division/OLL

STAT

SUBJECT: Proposed Legislation: To Amend Title 5, U.S. Code, to authorize alternative personnel management systems for scientific and technical personnel in the Federal government

1. Attached for your information and analysis is a copy of a legislative proposal package intended to authorize an alternative personnel management system for scientific and technical personnel in the Federal government. This package was sent last month to the Department of Defense for analysis and response. The Agency has not yet been requested to comment.

2. This initiative stems from the White House Science Council's finding that all Federal science and technology activities, including laboratories, are in need of revitalization.

[Redacted]

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DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
WASHINGTON, D.C. 20301

November 27, 1984

MEMORANDUM FOR DIRECTOR, DEFENSE ADVANCED RESEARCH PROJECTS
AGENCY

DIRECTOR, DEFENSE COMMUNICATIONS AGENCY
Attention: Counsel

DIRECTOR, DEFENSE INTELLIGENCE AGENCY
Attention: Counsel

DEFENSE LOGISTICS AGENCY
Attention: Counsel

DIRECTOR, DEFENSE MAPPING AGENCY
Attention: Counsel

DIRECTOR, DEFENSE NUCLEAR AGENCY
Attention: Counsel

~~TO~~ DIRECTOR, NATIONAL SECURITY AGENCY
Attention: Counsel

INFORMATION FOR UNDER SECRETARY OF DEFENSE FOR POLICY

UNDER SECRETARY OF DEFENSE FOR RESEARCH AND
ENGINEERING


ASSISTANT GENERAL COUNSEL
(International and Intelligence)

ASSISTANT GENERAL COUNSEL
(Legal Counsel)

SUBJECT: Non D/D Item 2347, Proposed Legislation, "To amend title 5, United States Code, to authorize alternative personnel management systems for scientific and technical personnel in the Federal government."

My memorandum of November 16, 1984, copy enclosed, requested comment on the subject item.

The above addressees are requested to furnish any comments they have for use in preparing the Department of Defense response. Reply by December 7, 1984 is desired.


Werner Windus
Director
Legislative Reference Service



DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
WASHINGTON, D.C. 20301

November 16, 1984

MEMORANDUM FOR SECRETARY OF THE ARMY
Attention: Chief of Legislative Liaison

SECRETARY OF THE NAVY
Attention: Chief of Legislative Affairs

SECRETARY OF THE AIR FORCE
Attention: Director, Legislative Liaison

ASSISTANT SECRETARY OF DEFENSE (Comptroller)
Attention: Assistant General Counsel
(Fiscal Matters)

ASSISTANT SECRETARY OF DEFENSE
(Manpower, Installations, and Logistics)

DEPUTY ASSISTANT SECRETARY OF DEFENSE
(Administration), OASD (Comptroller)

INFORMATION FOR UNDER SECRETARY OF DEFENSE FOR RESEARCH
AND ENGINEERING

ASSISTANT GENERAL COUNSEL
(Logistics)

ASSISTANT GENERAL COUNSEL
(Manpower and Health Affairs)

SUBJECT: Non D/D Item 2347, 98th Congress, "To amend title 5,
United States Code, to authorize alternative personnel
management systems for scientific and technical
personnel in the Federal government."

Addressees are requested to furnish to this office their comments on the attached item for incorporation in a response representing the views of the Department of Defense. It is requested that replies reach this office not later than December 7, 1984.

Werner Windus
Werner Windus
Director
Legislative Reference Service

Enclosure

THE WHITE HOUSE

WASHINGTON

Non D/D Item 2347

November 9, 1984


Dear Dick:

One of the major recommendations made last year by the White House Science Council's Federal Laboratory Review Panel was to create a scientific/technical personnel system that would be independent of the current Civil Service system. Since October 1983 an interagency group under the Federal Coordinating Council for Science, Engineering, and Technology has been working to produce draft legislation in response to that recommendation. During the past three months the group has also been assisted by the Office of Personnel Management in producing a complete legislative proposal package. That package, proposing the Federal Science and Technology Revitalization Act of 1985, is enclosed for your review.

The Administration has placed a high priority on revitalizing not only the Federal laboratories but all science and technology activities of the Federal government. Since people are the key to improvements in quality and productivity, it is especially important that the proposed legislation be reviewed expeditiously so that we can move forward with it early next year. Therefore, I am requesting comments and/or concurrence on the legislative proposal by December 14, 1984. The contact point in my office for this action is James Ling (395-3817).

I appreciate your cooperation.

Yours truly,



G. A. Keyworth
Science Advisor to the President

Dr. Richard DeLauer
Under Secretary for Research
and Engineering
Department of Defense
The Pentagon
Washington, D.C. 20301

Enclosure

STATEMENT OF PURPOSE AND JUSTIFICATION

To accompany a draft bill "To amend title 5, United States Code, to authorize alternative personnel management systems for scientific and technical personnel in the Federal government."

PURPOSE

The purpose of this draft bill is to provide a statutory basis within title 5, United States Code, for permitting agencies to establish alternative personnel management systems for scientific and technical personnel. The objectives of the draft bill are to improve the quality of government-operated Federal laboratories in order that the laboratories may fulfill efficiently and effectively their agency-assigned mission and become and remain centers of scientific excellence; to attract, retain, motivate, and improve the quality of Federal scientific and technical personnel; and to improve the overall ability of the Federal government to perform scientific and technical work. The major provisions of this draft bill are as follows:

- permit agencies to include scientific and technical personnel in the new personnel management systems;
- simplify job evaluation and remove covered positions from the position classification requirements of 5 U.S.C., chapter 51;
- provide flexibility to develop salary structures which ensure a competitive position in the labor market and which reflect the hiring and pay policies needed to attract, retain, and motivate a highly qualified scientific and technical work force;
- base pay increases on performance, not longevity;
- allow waiver of pay cap for up to five percent of specially qualified scientific and technical personnel;
- provide for performance and special awards and remove pay cap for lump-sum awards; and
- create a Senior Scientific and Technical Personnel Service.

No employee's basic pay would be reduced as a result of being included under an alternative personnel management system.

To achieve our purpose, the draft bill proposes to establish a new chapter 56 of title 5, United States Code. Required conforming and technical amendments to title 5 are also included in the draft bill.

JUSTIFICATION

The White House Science Council's Federal Laboratory Review Panel was asked by Dr. George A. Keyworth, Science Advisor to the President, to review the Federal laboratories and to recommend actions to improve their use and performance. The panel was specifically charged to look at laboratory missions, identify any systemic impediments to performance, and determine whether this nation is receiving an optimum return on its substantial investment in talent and facilities at the Federal laboratories.

In May 1983, the Panel, chaired by David Packard, reported that Federal laboratories have several serious deficiencies and, consequently, a number of the laboratories do not meet the quality and productivity standards that can be expected of them.

Specifically, the Panel reported that salaries at Federal laboratories are noncompetitive with the private sector at entry and senior levels. In addition, it found that Federal laboratories must deal with a personnel management system that is cumbersome and has little flexibility. As a result, there exists what the Panel referred to as an alarming "inability of many Federal laboratories—especially those under Civil Service constraints—to attract, retain, and motivate qualified scientists and engineers...." "[T]his situation," warned the Panel, "limits the productivity of the laboratories... [and,] [i]f not corrected,...will seriously threaten their vitality." For, as the Panel observed in its report, "[t]he key to a laboratory's success is a high quality and properly motivated scientific staff."

The Panel concluded that "administrative and legislative actions should be initiated...to create, at government-operated laboratories, a scientific/technical personnel system that is independent of current Civil Service personnel systems."

In November 1983, the Task Force on Research and Development, President's Private Sector Survey on Cost Control, similarly reported that administrative and legislative actions should be initiated to create, at government-operated laboratories, a scientific and technical personnel system independent of the current Civil Service personnel system. The Task Force was one of 36 task forces formed by the Executive Committee of the President's Private Sector Survey on Cost Control, which was established by executive order on 30 June 1982. It was charged with:

- identifying opportunities for increased efficiency and reduced costs achievable by executive action or legislation.
- determining areas where managerial accountability can be enhanced and administrative controls improved.
- suggesting short- and long-term managerial operating improvements.
- specifying areas where further study can be justified by potential savings.
- providing information and data relating to governmental expenditures, indebtedness, and personnel management.

The Task Force's mission was to review the operations and management of major research and development agencies throughout the Government, including the Department of Defense, Department of Energy, Department of Health and Human Services, National Aeronautics and Space Administration, and National Science Foundation as well as to identify opportunities for improvement.

The Task Force reported that most DoD personnel interviewed said that the ceiling on civil service salaries made it difficult to hire or retain top civilian researchers. It found that Federal laboratories report a gradual loss of technical personnel to industry. Furthermore, entry level salaries are not sufficiently competitive with private industry to attract the top college graduates.

The Task Force further reported that the current Federal pay schedules significantly handicap the laboratories in recruiting and retaining well qualified scientists and technicians. It said that Federal pay rates and policies for personnel in the science and engineering disciplines are not comparable with private sector pay for the same level of work.

The Task Force felt that creating scientific and technical personnel systems independent of the current Civil Service personnel system would alleviate to some degree the disadvantages now faced by the Government laboratories and would permit the laboratories to attract, retain, and motivate scientific and technical personnel required to fulfill efficiently and effectively their agency-assigned missions. In its report, the term "laboratories" is a generic term and includes facilities that are actually known as bureaus, centers, facilities, divisions, institutes, activities, offices, museums, stations, research units, or observatories.

These two studies have formed the basis for this draft legislation. The Administration feels strongly that it is of utmost importance to increase the quality of the scientific and technical work force in the Federal government.

The basic thrust of the draft legislation is to provide authority for agencies to construct alternative personnel systems which are appropriate to the scientific and technical personnel employed by the Federal government. The legislation does not attempt to define the personnel systems beyond establishing some very general guidelines. It is believed that this approach will provide the Government the greatest flexibility in dealing with a very complex problem.

The draft legislation provides, however, that agency alternative scientific and technical personnel management systems must be submitted to the Office of Personnel Management (OPM) for review and approval. This review will ensure compliance with applicable laws and regulations and will provide an opportunity for OPM to ensure that systems contribute to cost-effective and efficient personnel management. In addition, OPM and the General Accounting Office must evaluate implementation of the systems.

Accordingly, we are asking the Congress to provide authority for establishing alternative scientific and technical personnel management systems which will enable the Federal government to attract, retain, and motivate qualified scientific and technical personnel.

OCT 22 1984

A BILL

To amend Title 5, United States Code, to authorize alternative personnel management systems for scientific and technical personnel in the Federal government, and for other purposes.

1. Be it enacted by the Senate and House of Representatives of the
2. United States of America in Congress assembled, That this Act may be
3. cited as "The Federal Science and Technology Revitalization Act of
4. 1985."
5. Sec. 2. Chapter 56
6. Title 5, United States Code, is amended by inserting after chapter 55
7. the following new chapter:
8. "CHAPTER 56 - ALTERNATIVE FEDERAL SCIENTIFIC AND TECHNICAL
9. PERSONNEL MANAGEMENT SYSTEMS
10. "Sec.
11. "5601. Purpose.
12. "5602. Definitions.

1. "5603. Requirements for alternative Federal scientific and technical
2. personnel management systems.
3. "5604. Regulations, systems approval, and oversight.
4. "5605. Conversion to and from alternative Federal scientific and
5. technical personnel management systems; Procedures."
6. "Sec. 5601. Purpose
7. "It is the purpose of this chapter to enable the Government to attract,
8. retain, motivate and improve the quality of Federal scientific and
9. technical personnel; to improve the quality of Government operated
10. Federal laboratories in order that the laboratories may fulfill effi-
11. ciently and effectively their agency-assigned mission and become and
12. remain centers of scientific excellence; and to improve the overall
13. ability of the Federal government to perform scientific and technical
14. work."
15. "Sec. 5602. Definitions
16. "For the purpose of this chapter --
17. "(1) 'Agency' has the meaning set forth in section 5721 of this title;
18. but does not include the government of the District of Columbia;
19. "(2) 'Career Category' means a grouping of occupations or professions
20. which are sufficiently similar to warrant similar treatment in personnel
21. and pay administration;
22. "(3) 'Compensation' means all pay, awards, differentials, and benefits,
23. except for compensation for work injuries as authorized in chapter 81 of
24. this title and civil service retirement as authorized in subchapter III
25. of chapter 83 of this title;

1. "(4) 'Employee' has the meaning set forth in section 2105 of this
2. title; but does not include prevailing rate employees as defined in
3. section 5342 of this title or individuals employed by Government
4. controlled corporations;
5. "(5) 'Performance' means how well an employee accomplishes assigned
6. duties and responsibilities using such factors as quality, quantity,
7. timeliness, and manner of performance;
8. "(6) 'Salary structure' means dollar ranges of basic pay consisting of
9. minimums and maximums;
10. "(7) 'Scientific and Technical Personnel' means
11. "(a) employees, including managers and supervisors, engaged
12. in the performance of work --
13. "(i) requiring knowledge of an advanced type in one of the
14. mathematical, computer, physical, biological or other natural sciences
15. or one of the engineering sciences such as chemical, electrical or
16. mechanical engineering, customarily acquired by a prolonged course of
17. specialized intellectual instruction and study in an institution of
18. higher learning (as distinguished from knowledge acquired by a general
19. academic education, or from an apprenticeship, or from training in the
20. performance of routine mental, manual, mechanical, or physical
21. activities);
22. "(ii) requiring the consistent exercise of discretion and
23. judgment in its performance; and
24. "(iii) which is of such character that the output produced or
25. the result accomplished by such work cannot be standardized in relation

1. to a given period of time; or

2. "(b) employees, including managers and supervisors, who have
3. completed courses of specialized intellectual instruction and study
4. described in subparagraph (a)(i) of this paragraph and are performing
5. related work under appropriate direction or guidance to qualify them as
6. scientific and technical personnel described in subparagraph (a) of this
7. paragraph;

8. "(8) 'Senior Scientific and Technical Positions Within the Senior
9. Scientific and Technical Personnel Service' means scientific and tech-
10. nical positions under alternative personnel management systems which are
11. at the same levels as positions in the Senior Executive Service, in
12. GS-16, 17 or 18 of the General Schedule, or in level IV or V of the
13. Executive Schedule, but does not include positions which are required to
14. be filled by an appointment by the President by and with the advice and
15. consent of the Senate; and

16. "(9) 'Special Award' means a non-monetary award or a lump sum payment
17. based on tangible savings or intangible benefits to the Federal govern-
18. ment and given to reward special acts or services outside normal job
19. responsibilities, including suggestions and inventions; a single
20. scientific achievement; or an act of heroism".

21. "Sec. 5603. Requirements for Alternative Federal Scientific and
22. Technical Personnel Management Systems

23. "(a) The Office of Personnel Management, hereafter referred to as the
24. "Office", shall within six months of the passage of this Act prescribe
25. regulations establishing requirements for agency alternative personnel

1. management systems in accordance with the purpose set forth in section
2. 5601 of this title.

3. "(b) The requirements established by the Office for agency alternative
4. personnel management systems shall --

5. "(1) Take into account the principles of --

6. "(A) equal pay for substantially equal work;

7. "(B) pay distinctions for substantial differences in skill,
8. effort, responsibility, and working conditions; and

9. "(C) pay distinctions based on performance appraisals;

10. "(2) Provide for the establishment of job evaluation plans which
11. reflect internal job alignment based upon the level of skill, effort,
12. responsibility, and working conditions required to perform the work;

13. "(3) Provide for the establishment and annual adjustment by the
14. Office of salary structures which reflect rates of pay for similar
15. positions outside the Federal government. Such annual adjustments will
16. not automatically increase the rate of pay of each individual employed
17. within an alternative personnel management system. Rather, the rate of
18. pay of individual employees shall be set in accordance with procedures
19. established pursuant to sections 5603(c)(3) and 5603(d) of chapter 56 of
20. title 5 of the United States Code.

21. "(4) Provide for interaction between the development of salary
22. structures and the results of the internal job evaluation system which
23. recognizes the primacy of the labor market as the basis for setting pay;

24. "(5) Provide for establishment by the Office of methods for
25. determining compensation, including basic pay, that are consistent with

1. the purpose of this chapter and allow agencies to take into account such
2. factors as an employee's experience and achievement, the labor market,
3. and job responsibilities;
4. "(6) Provide for a 'Senior Scientific and Technical Personnel
5. Service' (SSTPS) which agencies may include in alternative personnel
6. systems established pursuant to this chapter. The SSTPS shall provide
7. for --
8. "(A) accumulation of annual leave consistent with section
9. 6304(f) of this title;
10. "(B) sabbaticals for career appointees consistent with section
11. 3396(c) of this title;
12. "(C) presidential rank awards for career appointees consistent
13. with section 4507 of this title;
14. "(D) payment of travel expenses of new SSTPS appointees to first
15. post of duty consistent with section 5723 of this title;
16. "(E) payment of travel expenses of SSTPS candidates for pre-
17. employment interviews requested by the agency consistent with section
18. 5752 of this title; and
19. "(F) retention of SSTPS pay and benefits in the event an SSTPS
20. career employee receives a Presidential appointment consistent with
21. section 3392(c) of this title.
22. "(c) Under regulations prescribed by the Office, the head of each agency may
23. establish alternative personnel systems which --
24. "(1) may identify separate career categories;
25. "(2) shall establish a performance appraisal system in accordance

1. with section 4302 of this title, except that peer comparison and ranking
2. may also be used when the head of the agency determines their use to be
3. appropriate;
4. "(3) shall allow pay to be set within the salary structures based on
5. such factors as employee experience and achievement, the special needs
6. of the Government consistent with 5 U.S.C 5334(a), the labor market,
7. position in a pay range, and job responsibilities;
8. "(4) shall provide for supervisory and managerial pay differentials
9. which shall not become a part of basic pay for any purposes except com-
10. putation of annuities, life insurance, and compensation for work
11. injuries;
12. "(5) may provide for special awards under this chapter, either in
13. the form of non-monetary recognition or in the form of lump sum
14. payments, which shall not become a part of basic pay;
15. "(6) shall provide for performance recognition which --
16. "(A) may be in the form of lump sum payments which shall not
17. become a part of basic pay;
18. "(B) may increase an employee's rate of basic pay within a pay
19. range or to a higher pay range; or
20. "(C) may be in the form of non-monetary recognition;
21. "(7) shall provide for recruiting for and appointment to positions;
22. "(8) shall provide for employee development, which may include
23. sabbaticals; and
24. "(9) shall provide for job evaluations.
25. "(d) The head of an agency may employ scientific and technical

1. personnel within a system established pursuant to this chapter subject
2. to the civil service laws and regulations, except that the head of the
3. agency may, based upon guidelines established by the Office, and without
4. regard to any other provision of law, evaluate their positions and, from
5. year to year, fix their compensation so as to make their compensation
6. competitive with rates and practices for similar positions existing
7. outside the Federal government.
8. "(e) Except as provided in paragraph (g) of this section, the rate of
9. basic pay of an individual employed under a system established pursuant
10. to this chapter shall not exceed the rate of basic pay for Level IV of
11. the Executive Schedule. Provided, however, that notwithstanding
12. sections 1341, 1342, 1349-1351, and subchapter II of chapter 15 of title
13. 31, the rates of basic pay of employees occupying positions covered by a
14. system established pursuant to this chapter may be adjusted by the
15. appropriate authority concerned if circumstances so warrant, consistent
16. with determinations made pursuant to paragraph (d) of this section,
17. whenever the rate of basic pay for Level IV of the Executive Schedule is
18. increased pursuant to section 5318 of this title.
19. "(f) A lump sum performance or special award under this chapter may be
20. paid to an employee without regard to any other provision of law
21. limiting either the amount or the rate of pay that an employee may
22. receive in a single year.
23. "(g) The head of each agency may provide for the designation of
24. specific scientific and technical positions within alternative
25. personnel management systems established pursuant to this chapter, and

1. primarily within Federal laboratories, as requiring the services of
2. specially qualified scientific or technical personnel, including
3. managers and supervisors. In so doing, the head of each agency shall
4. provide for a method of making appointments to such positions without
5. competitive examinations and of determining the annual maximum rate of
6. basic pay for each position so as to make it competitive with rates
7. existing outside of the Federal government including those rates in
8. existence at Government-owned, Contractor-operated National
9. Laboratories. Provided, however, that any such rate shall be fixed at
10. not less than the rate of basic pay for Level IV of the Executive
11. Schedule and not more than the maximum rate of basic pay payable to the
12. head of a Government-owned, Contractor-operated National Laboratory.
13. The number of positions within an agency designated as requiring the
14. services of specially qualified scientific and technical personnel
15. pursuant to this subsection shall number no more than five percent of
16. the total number of positions covered by alternative personnel systems
17. in that agency. In addition, any position so designated shall be
18. considered to be in the excepted service, as defined in section 2103 of
19. this title, and is hereby expressly excepted from the competitive
20. service as defined in section 2102 of this title.
21. "(h) An employee whose salary falls below the minimum of a pay range
22. because of a failure to receive pay increases due to performance may be
23. placed in a position in the next lower pay range.
24. "(i) For the purpose of section 5941 of this title, rates of basic pay
25. fixed under this chapter shall be considered fixed by statute.

1. "(j) Notwithstanding any other provision of law, an individual's
2. examination shall be completed, and selection for appointment to a
3. position covered by an alternative personnel management system pursuant
4. to this chapter shall become final, only after the individual has satis-
5. factorily served a probationary period of 3 years in accordance with
6. regulations prescribed by the Office of Personnel Management. Provided,
7. however, that an employee who has previously satisfactorily completed a
8. probationary or trial period and a total of 3 years of service in the
9. competitive service, excepted service or Senior Executive Service is not
10. required to serve a new probationary period under an alternative
11. personnel system."

12. "(k) Scientific and technical personnel covered by alternative
13. personnel systems may agree to a reduction of their basic pay of no more
14. than 10 percent and to placement of the money in separate interest-
15. earning accounts. In addition, Federal agencies may contribute an
16. amount equal to no more than one-half of each employee's contribution to
17. the accounts. Contributions to the accounts shall be deferred income
18. consistent with 26 U.S.C. 401(k). Employee contributions to the
19. accounts will be included as employee basic pay for computation of
20. annuities, life insurance, compensation for work injuries, severance
21. pay, and compensation for accrued annual leave upon separation.

22. "Sec. 5604. Regulations, Systems Approval and Oversight

23. "(a) The Office of Personnel Management shall prescribe regulations
24. within six months of enactment of this bill to carry out the purpose of
25. this chapter. The Office of Personnel Management shall review and

1. approve each alternative personnel management system proposed by an
2. agency pursuant to this chapter to determine whether the system meets
3. the requirements of law and of the Office regulations and whether the
4. system contributes to cost-effective and efficient personnel management.
5. "(b) In particular, the Office shall promulgate regulations governing
6. the utilization of compensation surveys and governing the requirements
7. for alternative personnel management systems pursuant to section 5603 of
8. this chapter. The Office shall also promulgate regulations governing
9. interrupted service; overtime pay; compensatory time; Sunday pay;
10. holiday pay; standby or on-call pay; night differential pay; hazard pay;
11. environmental pay; the conversion of covered positions from and to the
12. General Schedule, the Performance Management and Recognition System, the
13. Senior Executive Service, or other system as is appropriate upon the
14. establishment or disestablishment of an alternative personnel management
15. system pursuant to this chapter; and the transfer of an individual into,
16. out of, or between alternative systems established pursuant to this
17. chapter. Further, the Office may promulgate regulations limiting the
18. cost and amount of pay, differentials, and benefits and for a salary
19. reduction plan established pursuant to section 5603(k) of this chapter.
20. "(c) The Office of Personnel Management shall monitor the implementa-
21. tion of alternative personnel management systems established pursuant to
22. this chapter and evaluate them to ensure compliance with law, including
23. this chapter and section 1104 of this title, and with the Office
24. regulations. The Office shall also determine whether the systems
25. contribute to cost-effective and efficient personnel management. The

1. Office shall have authority to require, with appropriate notification,
2. that changes be made in a particular agency's systems and, when an
3. agency does not comply with such direction and its systems are not
4. operating in accordance with the purpose set forth in section 5601 of
5. this chapter, to terminate or alter any system or component thereof."
6. "Sec. 5605. Conversion to and from an Alternative Federal Scientific and
7. Technical Personnel Management System; Procedures
8. "(a) Each employee serving in a position at the time it is designated
9. as being under an alternative personnel management system established
10. pursuant to this chapter shall be given written notification, in accord-
11. ance with procedures established by the agency, of such designation.
12. The conversion will be accomplished with no reduction in basic pay for
13. the employee.
14. "(b) Performance appraisals--
15. (1) shall be used as the basis for--
16. "(A) receipt of a lump sum pro rata share of the equivalent of a
17. within-grade increase which would have been due under section 5335 of
18. this title;
19. "(B) receipt of a lump sum pro rata share of the equivalent of
20. an employee's merit increase which would have been due under chapter 54
21. of this title; and
22. (2) shall be used as a basis for any performance-based increase
23. under an alternative personnel system. The pro rata share of the
24. equivalent of a General Schedule employee's within-grade increase, or
25. the pro rata share of the equivalent of a merit increase under chapter

1. 54 of this title, will be computed through the day preceding the
2. effective date of an employee's conversion to an alternative personnel
3. system under this chapter, will be paid in a lump sum, and will not
4. increase an employee's basic pay.
5. "(c) Any increases authorized under section 5305(a) of this title which
6. occur prior to conversion under this chapter will be given to each
7. covered employee.
8. "(d) Pursuant to regulations prescribed by the Office of Personnel
9. Management, each agency which establishes one or more alternative per-
10. sonnel management systems pursuant to this chapter shall establish pro-
11. cedures to accomplish the conversion of designated employees to each
12. alternative personnel management system.
13. "(e) Pursuant to regulations prescribed by the Office of Personnel
14. Management, each agency which establishes one or more alternative per-
15. sonnel management systems pursuant to this chapter shall establish pro-
16. cedures for the potential termination of each system and the orderly
17. conversion of covered positions back to the General Schedule, the
18. Performance Management and Recognition System, the Senior Executive
19. Service, or other system as is appropriate."
20. Sec. 3. Conforming Amendments
21. Title 5, United States Code is further amended--
22. (1) In section 2102 (a)(1)--
23. (a) in paragraph (B) by striking out "and" at the end thereof;
24. (b) in paragraph (C) by adding "and" at the end thereof; and
25. (c) by adding at the end thereof the following:

1. "(D) positions designated pursuant to section 5603(g) of
2. this title as requiring the services of specially qualified
3. scientific and technical personnel.";
4. (2) In section 2108 (3)--
5. (a) by striking out "or the General Accounting Office" at the
6. end thereof and
7. (b) by inserting in lieu thereof "the General Accounting Office,
8. or the Senior Scientific and Technical Personnel Service";
9. (3) In section 3104(a)(2) by amending that paragraph to read as
10. follows:
11. "(2) The provisions of paragraph (1) of this subsection shall not
12. apply to any Senior Executive Service position (as defined in section
13. 3132(a) of this title) or to any position established under section
14. 5603(g) of this title.";
15. (4) In section 3132(a)(2)(E)--
16. (a) in paragraph (ii) by striking out "or" at the end thereof;
17. (b) in paragraph (iii) by adding at the end thereof "or"; and
18. (c) by adding at the end thereof the following new paragraph:
19. "(iv) any position included in a system established under
20. chapter 56 of this title;"
21. (5) In section 4303 (f)--
22. (a) in paragraph (2) by striking out "or" at the end thereof;
23. (b) in paragraph (3) by striking out the period at the end
24. thereof and inserting in lieu thereof: ", or"; and
25. (c) by adding at the end thereof the following new paragraph:

1. "(4) the reduction in pay, the reduction from one pay
2. range to another, or the removal of an employee in a position
3. covered by an alternative personnel management system established
4. pursuant to chapter 56 of this title who is serving a probationary
5. or trial period under an initial appointment pursuant to that
6. chapter.";
7. (6) In section 4501(2)--
8. (a) in paragraph (B) by striking out "; and" at the end thereof; and
9. (b) by inserting in lieu thereof "or scientific and technical
10. personnel, as defined by section 5602 of this title, who are covered by
11. alternative scientific and technical personnel management systems under
12. chapter 56 of this title; and";
13. (7) In section 5102(c)--
14. (a) in item (26) by striking out "or" at the end thereof;
15. (b) in item (27) by striking out the period at the end thereof
16. and inserting in lieu thereof "; or"; and
17. (c) by adding at the end thereof the following new item:
18. "(28) Employees whose departments or agencies have
19. included them in a system established under chapter 56 of this title.";
20. (8) In section 5363 by adding at the end thereof the following new
21. subsection:
22. "(d) In the case of an employee covered by an alternative
23. personnel management system established pursuant to chapter 56 of this
24. title, pay retention shall be as prescribed by the Office of Personnel
25. Management by regulations established to implement the system.";

1. (9) In section 5373--
2. (a) in item (3) by striking out "or" at the end thereof;
3. (b) in item (4) by striking out the period at the end thereof
4. and inserting in lieu thereof "; or"; and
5. (c) by adding at the end thereof the following new item:
6. "(5) chapter 56 of this title.";
7. (10) In the table of chapters for Part III of Title 5, United States
8. Code, by inserting after the item relating to chapter 55 the following
9. new item:
10. "56 - Alternative Federal Scientific and Technical Personnel
11. Management Systems5601";
12. (11) In section 7501(1) by amending that paragraph to read as follows:
13. "(1)'employee' means an individual in the competitive service
14. who is not serving a probationary or trial period under an initial
15. appointment or, in the case of an individual other than one
16. occupying a position in an alternative personnel management system
17. established pursuant to chapter 56 of this title, who has completed
18. 1 year of current continuous employment in the same or similar
19. positions under other than a temporary appointment limited to 1 year
20. or less; and";
21. (12) In section 7511(a)(1)(B) by striking out the semicolon and
22. inserting in lieu thereof: "or who has completed
23. a probationary period pursuant to section 5603(j) of this title in a
24. position that is covered by an alternative personnel management
25. system"; and

1. (13) In section 7511(b)--
2. (a) in paragraph (2) by striking out the period at the
3. end thereof and inserting in lieu thereof: "; or"; and
4. (b) by adding at the end thereof the following new paragraph:
5. "(3) who is serving in a probationary period pursuant
6. to section 5603(j) of this title in a position that is covered by an
7. alternative personnel management system established pursuant to chapter
8. 56 of this title."
9. Sec 4. General Accounting Office Review and Evaluation
10. The United States General Accounting Office shall evaluate alternative
11. Federal scientific and technical personnel management systems
12. established pursuant to this Act and, 5 years after the effective date
13. of this Act, shall transmit to the Congress and to the Office of
14. Personnel Management a report of its findings. The report shall include
15. an evaluation of the implementation and operation of the systems, a
16. comparison of the cost of the new provisions with the cost of the
17. systems otherwise provided by law, and an assessment of the acceptabi-
18. lity of the systems to employees and managers. It shall also provide
19. recommendations for changes or improvements in the systems.
20. Sec. 5. Effective Date
21. The provisions of this Act shall take effect on the date of enactment.

OCT 22 1984

SECTION-BY-SECTION ANALYSIS

To accompany a draft bill to amend title 5, United States Code, to authorize alternative personnel management systems for scientific and technical personnel in the Federal government, and for other purposes.

Section One: Short Title

The first section titles the Act as "The Federal Science and Technology Revitalization Act of 1985".

Section Two: Chapter 56

The second section amends title 5, United States Code, by inserting a new chapter, chapter 56, allowing agencies, with the approval of OPM, to establish alternative Federal scientific and technical personnel management systems which will better enable Federal agencies to attract, retain, and motivate scientific and technical personnel.

Section 5601: Purpose

Section 5601 states the objectives of the Act. The paramount objective is to improve the quality of Government operated Federal laboratories. This objective is supported by the other two important objectives stated: to attract, retain, motivate and improve the quality of Federal scientific and

technical personnel and to improve the overall ability of the Federal government to perform scientific and technical work.

Section 5602: Definitions

Paragraph (1) of section 5602 states that "agency" has the same meaning as that defined in 5 U.S.C. 5721. Executive agencies and military departments, as well as certain legislative and judicial organizations, are covered. Excluded are Government controlled corporations and the government of the District of Columbia. In addition to its coverage being appropriate, section 5721 was selected in order to make it clear that, by operation of 5 USC 302, heads of agencies can delegate to their subordinates any or all of the authority conferred upon them by chapter 56.

Paragraph (2) of section 5602 provides that "career category" means a grouping of occupations or professions which are sufficiently similar to warrant similar treatment in personnel and pay administration. 5 U.S.C. 5603(c)(1) of this Act provides authority for the head of each agency to identify "career categories" consistent with OPM regulations. This could be done for whatever purpose may be useful and appropriate under a particular alternative personnel system. For example, career categories could be tied to specific pay ranges, could have similar pay increases for the same level of performance, or could have similar benefit entitlements.

Paragraph (3) of section 5602 states that "compensation" means all pay, awards, differentials and benefits, except for compensation for work injuries and civil service retirement. The word compensation is used in 5 U.S.C. 5603(d) which states that an agency head may fix the "compensation" of employees in alternative personnel systems "so as to make their compensation competitive with rates and practices for similar positions existing outside the Federal government." Thus, subject to OPM regulations, pay and benefits for covered employees may vary for the purpose of attracting and retaining highly qualified scientific and technical personnel. However, compensation for work injuries as authorized in chapter 81 of this title, and civil service retirement as authorized in subchapter III of chapter 83 of this title, are fixed by law and will not be part of the compensation which may be adjusted by the agency head.

Paragraph (4) of section 5602 provides that "employee" has the same meaning as that set forth in 5 U.S.C. 2105, but does not include prevailing rate employees as defined in 5 U.S.C. 5342. Also, since the definition of "agency" does not include Government controlled corporations, the definition of "employee" provides that employees of Government controlled corporations are not covered by this Act.

Paragraph (5) of section 5602 provides that "performance" means how well an employee accomplishes assigned duties and responsibilities using such factors as quality, quantity, timeliness, and manner of performance. According to 5 U.S.C. 5603(c)(2) agency heads will establish a performance appraisal system in accordance with 5 U.S.C. 4302 except that peer comparison and ranking may

also be used as a basis for: pay increases within a pay range or to a high pay range; lump sum awards; and non-monetary awards.

Paragraph (6) of section 5602 provides that "salary structure" means a structure or grouping of dollar ranges of basic pay. Salary structures consisting of one or more ranges of pay are to be established in lieu of the General Schedule and its grades, as specified in 5 U.S.C. 5104. This definition provides that salary structures will contain ranges of basic pay with a specified minimum and maximum which will be paid for jobs assigned to those ranges. Pay ranges within a salary structure may be "open", i.e. permitting pay to be set at any dollar amount therein, or at the discretion of an agency, may contain a limited number of specific rates of pay which are to be used.

Paragraph (7) of section 5602 provides a definition of the phrase "scientific and technical personnel". By virtue of how it defines "scientific and technical personnel", the Act's express grant of employment authority also defines the Act's coverage. By design, the essential purpose of the Act is to enable the Government to attract and retain individuals of the highest caliber to perform scientific and technical work in the "hard" sciences and engineering. Definitions were adopted, therefore, which combined portions of the definition of "Research, Development, Test and Evaluation" found in the Atomic Energy Act of 1954 (as amended), 42 U.S.C. 2014; the definition of "professional employee" found at 5 U.S.C. 7103; the meaning of "scientist and professional positions" intended by 5 U.S.C. 5371 and expressed in chapter 5 of the Federal Personnel Manual; and the descriptions of Series 400, 800,

1300, and 1500 found in OPM's Position Classification Standards (TS-69), dated May 1983. The intended result is to cover those positions which require the skills of a scientist, engineer, or in some cases, a technician, including line managers, supervisors, and project leaders, but to exclude from coverage prevailing rate employees and any positions primarily involving the providing of administrative support such as positions requiring the services of accountants, attorneys, budget specialists, personnel specialists, contracting officers, supply specialists, secretaries, and clerical personnel.

While the Act's definition of "scientific and technical personnel" requires that an employee be performing work that requires advanced knowledge of a scientific or technical nature to be covered under chapter 56, it is not necessary that the employee acquire that knowledge through a prolonged course of specialized intellectual instruction and study in an institution of higher learning. What is necessary is that the work requires knowledge which is customarily acquired in that fashion. Thus, while it is anticipated that most covered employees will possess an advanced degree, it will not be necessary that an employee possess an advanced degree in order to be included under a system established under chapter 56 of this title.

Paragraph (8) of section 5602 provides a definition for "Senior Scientific and Technical Positions Within the Senior Scientific and Technical Personnel Service" (SSTPS). The definition states that the SSTPS may include scientific and technical positions at the same levels as positions which are in the Senior Executive Service, General Schedule grades 16-18, or levels IV or V of the Executive Schedule. However, there is no requirement that the positions

have supervisory or managerial duties or responsibilities. The positions would not be in the SES, General Schedule, or under Executive Schedule pay rates, but would be at the same or higher pay levels. The definition states that positions which are required to be filled by a Presidential appointment by and with the advice and consent of the Senate may not be included in an SSTPS.

Paragraph (9) of section 5602 provides a definition for "special award". The definition states that special awards are provided for special acts or services outside normal job responsibilities, including suggestions and inventions; a single scientific achievement; or an act of heroism. An award given for performance compared to established performance standards would not be included under this definition. The definition also states that the awards may be non-monetary or provided as lump sum payments to reward tangible savings or intangible benefits to the Government.

Section 5603: Requirements for Alternative Federal Scientific and Technical Personnel Management Systems.

Section 5603(a) provides that OPM shall prescribe regulations establishing requirements for agency alternative personnel systems.

The requirements will provide a general framework for alternative personnel systems. Each agency will be provided a great deal of flexibility to design one or more alternative personnel systems which best serve its mission consistent with merit system principles.

Section 5603(b) provides a list of those areas of OPM responsibility for establishing requirements for alternative personnel systems.

Section 5603(b)(1) provides principles for all OPM requirements. Paragraph (i) of section 5603(b)(1) contains the principle in current law that there be equal pay for substantially equal work (see 5 U.S.C. 5301(a)(1)). Paragraphs (ii) and (iii) of section 5603(b)(1) are more specific than the current legal requirement that pay distinctions be maintained in keeping with work and performance distinctions (see 5 U.S.C. 5301(a)(2)). These paragraphs state that OPM requirements must take into account the principles of pay distinctions for substantial differences in skill, effort, responsibility, and working conditions and pay distinctions based on performance appraisals.

Sections 5603(b)(2) and (b)(3) provide that OPM shall provide for the establishment of job evaluation plans and shall establish and annually adjust salary structures for covered scientific and technical positions. An annual adjustment of salary structures could be zero, meaning no change. OPM requirements will reflect the concept that while job evaluation and pay setting are interactive, the labor market will be given the greatest weight when establishing salary structures and assigning jobs to pay ranges within those structures. Salary structures will reflect rates of pay for similar positions outside the Federal government. Job evaluation plans will reflect internal job alignment based upon the level of skill, effort, responsibility, and working conditions required to perform the work.

Data to be used to identify labor market rates may be developed from authoritative, comprehensive Federal and non-Federal pay surveys, or any other supplemental surveys conducted in accordance with OPM regulations as necessary to ensure an adequate data base upon which to base pay decisions. Job evaluation systems, while recognizing increasing levels of responsibility, will avoid rigid specifications such as current requirements for a specific number of subordinate employees and requirements that positions have supervisory or managerial responsibilities in order to achieve a certain level.

OPM requirements on job evaluation and salary structures will permit a great deal of agency flexibility to set pay and other forms of compensation. At the same time, OPM requirements should ensure consistency in compensation among Federal activities for scientific and technical personnel in the same occupations for substantially equal work within the appropriate geographic location.

Annual adjustments of salary structures will not result in automatic pay increases for individuals employed under alternative personnel systems. The rate of pay of individual employees will be set consistent with OPM regulations, the provisions of alternative personnel systems, and in accordance with sections 5603(c)(3) and 5603(d) of chapter 56 of title 5 of the United States Code. The basic pay of individual employees will be adjusted at the time designated by agencies for performance-based increases.

Section 5603(b)(4) provides that OPM requirements shall provide for interaction between the development of salary structures and the results of

the internal job evaluation system which recognizes the labor market as the primary basis for setting pay. The objective is to be competitive with the labor market in order to attract and retain highly qualified personnel. Therefore, comprehensive salary surveys will be the primary basis upon which salary structures will be established.

However, this section also recognizes that it is frequently impossible to find jobs in the market which are sufficiently similar to those in the Federal sector to make an appropriate match. This fact and the desire of organizations to reflect the internal worth of jobs as they relate to the mission makes the establishment of an internal evaluation system essential.

The desire for internal equity must always be balanced against the overriding need to be externally competitive in the appropriate labor market for the kind and number of people needed to accomplish the organization's mission. Assignment of jobs to pay ranges within salary structures will be made in consideration of these factors.

Section 5603(b)(5) provides that OPM shall establish methods for determining compensation, including basic pay, that are consistent with the purpose of this chapter. Here again, substantial agency flexibility will be provided in determining the combination of pay and benefits to be utilized. OPM will not specify the maximum total compensation of covered employees. However, 5 U.S.C. 5604(b) provides that OPM may promulgate regulations establishing limits on the cost and amount of pay, differentials, and benefits. OPM may establish criteria and procedures for determining compensation. OPM may also

provide requirements and guidance for determining the value or amount of compensation provided for similar positions outside the Federal government. The requirements for determining compensation will permit, and in fact, encourage agencies to achieve the objectives stated in 5 U.S.C. 5601.

Section 5603(b)(6) provides that OPM shall establish requirements for a "Senior Scientific and Technical Personnel Service." However, OPM will not require that any alternative personnel system include an SSTPS. This section also provides that specific benefits listed, which are now provided by law for the Senior Executive Service, must be included in an SSTPS established under an alternative personnel system.

Thus, SES employees converting to an alternative personnel system could be given status and benefits similar to those provided to SES employees. Benefits which must be included in an SSTPS are accumulation of annual leave beyond the 30 day limit established for non-SES employees, sabbatical leave and Presidential rank awards for career appointees, payment of travel expenses of SSTPS candidates for pre-employment interviews and of new appointees to their first post of duty, and retention of pay and benefits in the event a career employee receives a Presidential appointment.

Section 5603(c) provides authority for the head of each agency to establish one or more alternative personnel systems for scientific and technical personnel. Agencies might include all or part of their scientific and technical personnel under alternative personnel systems, subject to OPM approval of systems. An agency could establish an alternative personnel

system applicable to only one laboratory or could have more than one system for a single laboratory, such as a separate SSTPS alternative personnel system. This would permit tailoring of alternative personnel systems to laboratory mission needs. However, OPM will assess the impact of proposed alternative personnel systems on other agencies during its review of proposed systems.

Section 5603(c)(1) provides that alternative personnel systems may identify career categories as defined and discussed under the definition of "career category" above. The system plan(s) would describe the purpose or use of career categories established.

Section 5603(c)(2) provides that performance appraisal systems established under alternative personnel systems must comply with 5 U.S.C. 4302, except that peer comparison and ranking may also be used. Peer comparison and ranking is considered a very acceptable approach to performance appraisal, especially for scientific and technical personnel engaged in long term research where quantifiable work products are not available but judgments as to relative contributions, approach, methodology, and creativity can be made. This requirement is intended to apply to employees in an SSTPS as well as to other employees covered by alternative personnel systems.

Section 5603(c)(3) provides that alternative personnel systems shall allow pay to be set within the salary structures based on such factors as employee experience and achievement, the special needs of the Government consistent with 5 U.S.C. 5334(a), the labor market, position in a pay range, and job

responsibility. This should be interpreted to include information about pay rates and practices for similar positions within and outside the Federal government, including rates paid in different geographical areas. This should also be interpreted to include information about factors such as candidate qualifications, experience, education, skills, reputation, accomplishments, and performance. For the types of personnel actions listed in 5 U.S.C. 5334(a), pay shall be set consistent with OPM regulations and with the provisions of this chapter.

Section 5603(c)(4) provides that an alternative personnel system shall provide for pay differentials for individuals who assume supervisory or managerial responsibilities. Supervisory and managerial pay differentials shall be used as the method of recognizing supervisory and managerial responsibility. Such differentials will not be a part of basic pay for any purposes except computation of annuities, life insurance, and workers compensation for work injuries. Such differentials could also be provided to project or team leaders. Differentials would compensate for leadership and coordination work. Agencies would be expected to periodically reaffirm eligibility for supervisory or managerial differentials. Supervisory and managerial differentials would not be included for the purpose of applying the limits on the maximum rate of basic pay under 5 U.S.C. 5603(e) and (g). Termination or reduction of supervisory and management differentials will be a management decision and will not be considered a performance-based action under chapter 43 of title 5 of the U.S. code or an adverse action under chapter 75 of title 5 of the U.S. Code.

Section 5603(c)(5) provides that alternative personnel systems may authorize special awards. Special awards could include honorary or other non-monetary recognition or could be in the form of lump sum payments which would not increase an employee's rate of basic pay. Special awards would be given to reward special acts or services outside normal job responsibilities and performance standards, including suggestions and inventions; a single scientific achievement; or an act of heroism. Special awards would not normally be given when performance recognition (see section 5603(c)(6)) would be more appropriate.

Section 5603(c)(6) states that alternative personnel systems shall provide for performance recognition which may be in the form of lump sum payments, may increase an employee's rate of basic pay, or may be in the form of non-monetary recognition. Performance recognition could raise basic pay to a higher pay rate within the same pay range or could raise basic pay to a pay rate which is included in a higher pay range.

Alternative personnel systems may not provide for traditional career-ladder promotions. Rather, performance-based pay increases will be provided within pay ranges and to higher pay ranges. This flexibility is appropriate since the nature of scientific and technical work lends itself to the concept of movement through an occupational pay range and salary structure on a continuum without artificial barriers. Scientific and technical personnel are usually hired on the basis of extensive job-related educational and professional experience and training. Therefore, pay increases are most appropriately determined by performance, not time requirements. However, alternative per-

sonnel systems may provide for competitive promotion procedures consistent with 5 U.S.C. 3361 and OPM regulations.

Section 5603(c)(7) authorizes the head of each agency to recruit and appoint employees to agency alternative personnel systems. It is expected that this authority will be delegated to the head of a Federal laboratory or to other management officials in order to ensure quality candidates and to expedite the hiring process. Examination of qualifications will be subject to OPM guidance and civil service laws and regulations.

Section 5603(c)(8) provides that alternative personnel systems shall provide for employee development. Employee development may include on-the-job or formal training, sabbaticals for employees, specific work assignments or details, work under the leadership or supervision of other employees, or other activities which will improve performance of current job assignments or prepare employees for future work assignments or other positions.

Section 5603(d) provides authority for the head of an agency to employ scientific and technical personnel within alternative personnel systems subject to civil service laws and regulations. Thus, for example, agencies must avoid prohibited personnel practices under 5 U.S.C. 2302.

This section also provides that the head of an agency may evaluate positions and fix compensation for scientific and technical personnel so as to make compensation competitive with rates and practices for similar positions existing outside the Federal government. In this regard, it is significant

that section 5603(d) uses the word "compensation" rather than "pay". It is the intent of the Act to authorize the head of an agency, pursuant to regulations promulgated by OPM, to fix not only the rate of basic pay of a chapter 56 employee, but other forms of compensation as well, except for retirement as authorized in subchapter III of chapter 83 of this title and compensation for work injuries as authorized in chapter 81 of this title. This authority is to be exercised within guidelines established by OPM, including those established to implement 5 U.S.C. 5603(b). It is envisioned that rates of pay, in particular, will be fixed primarily on the basis of comprehensive, authoritative salary surveys which either already exist or which are commissioned expressly for that purpose.

Section 5603(e) limits the rate of basic pay for all individuals employed under alternative personnel systems, except those serving as specially qualified scientific and technical personnel in excepted service positions as authorized by 5 U.S.C. 5603(g), to level IV of the Executive Schedule. This section also provides for adjustments of the rate of basic pay for these employees whenever the rate of basic pay for level IV of the Executive Schedule is increased pursuant to 5 U.S.C. 5318. Some of the language of this section is identical to language currently found at the beginning of 5 U.S.C. 5307 and is necessary to avoid a violation of antideficiency requirements of law.

Executive Level IV was chosen so that the maximum rate of pay would be high enough to accommodate all existing scientific and technical positions which could be included under alternative personnel systems. This feature will

facilitate the movement of an individual from one system to another.

Section 5603(f) provides that lump-sum performance or special awards may be paid to employees under alternative personnel systems regardless of a limit under any other provision of law on the amount or rate of basic pay that an employee may receive in a single year. Thus, limits on the maximum rate of basic pay which an employee may receive under 5 U.S.C. 5603(e) and (g) will not preclude payment of performance or special awards. In addition, supervisory and managerial differentials and employee benefits are not included in a determination of an employee's rate of basic pay.

Section 5603(g) provides that the head of an agency may provide for the designation of specific scientific and technical positions as requiring the services of specially qualified scientific and technical personnel. No more than 5 percent of the total number of positions covered by alternative personnel management systems in each agency may be so designated. The positions are placed in the excepted service as defined in 5 U.S.C. 2103 and appointments may be made to such positions without competitive examinations.

Placement of these positions in the excepted service will expedite the hiring process, thus substantially improving the ability of the Federal government to attract and hire the highest calibre scientific and technical personnel. At the same time, individuals of the calibre intended to be placed in these positions should not be particularly concerned about job security, which is potentially less under excepted service appointments.

The primary purpose of this authority is to enable laboratories to attract exceptional scientists, engineers, and other technical personnel. Section 5603(g) stipulates, therefore, that its authority must be used primarily for positions at laboratories as opposed to positions at headquarters or other activities. It should be noted, however, that the authority of section 5603(g) expressly applies to managers and supervisors as well as to non-managers and non-supervisors.

In order to enable laboratories to attract exceptional scientific and technical personnel, the maximum rate of basic pay for these positions is higher than for other positions under alternative personnel systems. The maximum is the highest rate of basic pay payable to the head of a Government-owned, Contractor-operated National Laboratory. Actual pay is to be set so as to make it competitive with rates existing outside the Federal government. The minimum rate of basic pay for these excepted service positions is Level IV of the Executive Schedule.

Section 5603(h) provides that an employee whose salary falls below the minimum of a pay range because of a failure to receive pay increases due to performance may be placed in a position in the next lower pay range. Thus, while an employee would not actually lose pay if he or she fails to advance because of performance, he or she would not automatically receive the benefit of an increase in the minimum rate of basic pay for a given pay range. It is intended that an agency could also retain the employee in the same position even though he or she would be paid less than the minimum of the assigned pay range.

Section 5603(i) provides that rates of basic pay under chapter 56 shall be considered fixed by statute for the purpose of 5 U.S.C. 5941. Section 5941 provides authority for payment of allowances to employees stationed outside the continental United States or in Alaska when living costs are substantially higher than in the District of Columbia and also when conditions of environment warrant a recruitment incentive. One requirement for receipt of such allowances is that the rates of basic pay for employees must be fixed by statute.

Section 5603(j) provides for satisfactory completion of a 3 year probationary period before an appointment to a position under an alternative personnel system becomes final. This probationary period would apply to both competitive service and excepted service employees under alternative personnel systems.

The 3 year probationary period would be longer than the 1 year probationary period currently required by regulation for competitive service employees under the authority of 5 U.S.C. 3321. The longer probationary period is necessary in order to identify unsatisfactory or marginal scientific and technical personnel. Because of the long-term nature of projects and duties typically assigned to scientific and technical personnel, such as research, development, test or evaluation assignments, it is not always feasible to properly measure and satisfactorily assess the performance of scientific and technical personnel in 1 year or less.

The 3 year probationary period will be part of the examination and selection process for final appointment of scientific and technical personnel. Probationary employees will be required to meet performance requirements of their positions. Nothing in chapter 43 of title 5 of the U.S. Code should be interpreted to require a determination about an employee's eligibility for a final appointment before a 3 year probationary period is completed. This section also provides, however, that an employee is not required to serve a new probationary period under an alternative personnel system if the employee has previously satisfactorily completed a probationary or trial period and a total of 3 years of service in the competitive service, excepted service, or Senior Executive Service.

Section 5603(k) provides for a salary reduction (deferred income) system for scientific and technical personnel under alternative personnel systems. Requirements and guidance for administering a salary reduction plan will be established by OPM consistent with 26 U.S.C. 401(k) and applicable IRS regulations.

The purpose of this provision is to permit employees to assume a greater individual responsibility for financial planning for their retirement. Employees will be able to agree to deferral of up to 10% of their basic pay. The result will be a reduction of the employee's current basic pay. The money will be placed in interest-earning employee accounts which may include Federal government securities and other investment options approved by the U.S. Office of Personnel Management. Agencies will be able to contribute nothing to the accounts or will be able to contribute amounts equal to no more than one-half of employee contributions.

Employees will benefit because they will be saving for retirement, will earn interest on the deferred income, and will usually be in a lower tax bracket and eligible for special methods of computing the tax due when amounts are eventually distributed to them. Under current IRS requirements and guidance for this type of trust, employees may be able to borrow money from their accounts. Otherwise, distributions may only be made in the event of the employee's retirement, death, disability, separation from the service, attainment of age 59 1/2 or hardship. Final IRS regulations will probably define "hardship".

In order to prevent a reduction of benefit entitlements for employees who agree to contribute to a salary reduction account, this section provides that employee contributions to the accounts will be included in determining the amount of certain employee benefits which are computed based on the basic pay received by the employees. The benefits listed in this section are annuities (Civil Service Retirement, including disability retirement), life insurance, compensation for work injuries, severance pay, and compensation for accrued annual leave upon separation.

Employee participation in the Federal salary deferral plan will be entirely voluntary. Federal employees will continue to be eligible to open Individual Retirement Accounts. While the Federal government will lose tax revenue on contributions to the accounts, the Government will benefit by being able to defer payment of a portion of employee salaries and by potentially paying a rate of interest on contributions to employee accounts below that paid by the Federal government on other Government securities.

Section 5604: Regulations, Systems Approval, and Oversight

Section 5604(a) requires OPM to prescribe regulations to carry out the purpose of this chapter. The regulations are to be issued within six months of enactment of the Act.

This section also provides that OPM must review and approve each alternative personnel management system. It is intended that alternative personnel management systems must be approved before they may be implemented.

Therefore, agencies must submit written plans for each alternative personnel management system to OPM. OPM review will ensure that each system fully complies with requirements of law and OPM regulations. For example, OPM will ensure that the OPM requirements for alternative personnel systems established pursuant to 5 U.S.C. 5603(b) are reflected by the provisions of alternative personnel systems. Another example is that OPM will review alternative personnel management systems to ensure that all system components to be developed by agencies under 5 U.S.C. 5603(c) are consistent with legal and regulatory requirements and contribute to cost-effective and efficient personnel management.

OPM will also provide advice and guidance on how alternative personnel management systems may be improved. In addition, OPM will compare systems to ensure that Federal agencies do not needlessly engage in policies resulting in escalation of compensation costs for other agencies in the same geographic locations.

Section 5604(b) provides a list of topics for OPM regulations. OPM must issue regulations establishing the requirements referred to in 5 U.S.C. 5603(a) and (b). OPM must issue regulations governing the utilization of compensation surveys. OPM must issue regulations governing interrupted service, overtime pay, compensatory time, Sunday pay, holiday pay, standby or on-call pay, hazard pay, environmental pay, and night differential pay under alternative personnel systems. OPM must issue regulations governing conversion of covered positions from and to other pay systems upon the establishment or disestablishment of alternative personnel systems. OPM must also issue regulations on the transfer of individuals into, out of, or between alternative personnel systems. Further, OPM may promulgate regulations limiting the cost and amount of pay, differentials, and benefits and for a salary reduction plan established pursuant to section 5603(k) of this chapter. This list of subjects of OPM regulations does not preclude other OPM regulations governing alternative personnel systems.

Section 5604(c) requires OPM to monitor and evaluate the implementation of alternative personnel systems. OPM evaluations must determine compliance with legal and regulatory requirements. OPM will also determine whether alternative personnel systems are contributing to cost-effective and efficient personnel management. Finally, the evaluations will provide an opportunity for OPM to assess compliance with provisions of alternative personnel systems and to recommend improvements in agency systems or implementing procedures. OPM shall have the authority to require that agencies correct any personnel actions which are contrary to any law, rule, or regulation or are contrary to standards established under delegations of authority pursuant to 5 U.S.C. 1104. OPM will also have the authority, for specified reasons, to require

that changes be made to an alternative personnel system. If an agency does not comply with OPM directions to change an alternative personnel system and the system is not operating in accordance with the purpose stated in 5 U.S.C. 5601, OPM may terminate or alter the system or a component of the system.

Section 5605: Conversion To and From an Alternative Federal Scientific and Technical Personnel Management System; Procedures

Section 5605(a) provides that whenever a position is designated as being under an alternative personnel management system, the incumbent must be given a written notification of the designation. Agencies must establish procedures for meeting this requirement. It is intended that the procedures are to be included in system plans submitted to OPM for review and approval. This section also provides that the basic pay of employees converted from another pay system to an alternative personnel system shall not be reduced.

Section 5605(b) provides that an employee converted from the General Schedule pay system to an alternative personnel system will receive a lump-sum pro rata share of the equivalent of the employee's next within-grade increase. Within-grade increases are authorized for General Schedule employees under 5 U.S.C. 5335 and applicable OPM regulations. An employee converted from the Performance Management and Recognition System under chapter 54 of this title to an alternative personnel system will receive a lump-sum pro rata share of the equivalent of the employee's next merit increase which would have been due under chapter 54 of this title. Pro rata payments will not increase an

employee's basic pay. Lump sum pro rata payments must be based on performance appraisals. In other words, agency and OPM performance requirements for within-grade increases and merit increases must be met.

The pro rata share of the equivalent of a General Schedule employee's within-grade increase, or the pro rata share of the equivalent of an employee's merit increase under chapter 54, will be computed through the day preceding the effective date of the employee's conversion to an alternative personnel system under chapter 56 of title 5. For employees converted from the General Schedule pay system, it is intended that the amount of any pro rata increase will be based on the amount of time served toward the required waiting period for the next increase in basic pay using the waiting periods described in 5 U.S.C. 5335. An employee who would be at step 10 of the General Schedule will not be eligible for a pro rata share of a within-grade equivalent increase under chapter 56. For employees converted from the Performance Management and Recognition System, it is intended that any pro rata increase will be based on the amount of time served toward the date of the next merit increase for employees covered by chapter 54 of this title.

Section 5605(c) provides that an annual pay rate adjustment authorized by 5 U.S.C. 5305, which is effective prior to conversion to an alternative personnel system, will be given to employees covered by alternative personnel systems.

However, alternative personnel systems under chapter 56 are not included within the coverage of 5 U.S.C. 5301(c). For this reason, 5 U.S.C. 5305 is not applicable to scientific and technical personnel under alternative personnel systems. Therefore, employees under alternative personnel systems are not eligible for annual pay adjustments under 5 U.S.C. 5305(a)(2).

However, under chapter 56, it is expected that individual pay increases will be made based on such factors as employee experience and achievement, the labor market, position in a pay range, and job responsibilities.

Section 5605(d) provides that each agency which establishes one or more alternative personnel systems must establish procedures for conversion of designated employees to each alternative personnel system. It is intended that the procedures are to be included in agency system plans submitted to OPM for approval. The procedures must be in conformance with OPM regulations, including regulations on transfer of individuals into, out of, and between alternative personnel systems pursuant to 5 U.S.C. 5604(b).

Section 5605(e) provides that agencies must establish procedures for the potential termination of each alternative personnel system. It is intended that these procedures are to be included in agency system plans submitted to OPM for approval. The procedures must provide for the orderly conversion of covered positions back to the General Schedule, the Performance Management and Recognition System, the SES or other pay system as is appropriate. The procedures must be in conformance with OPM regulations, including regulations on conversion of positions to other pay systems pursuant to 5 U.S.C. 5604(b). However, this section should not be interpreted to require that

employees be converted back to the same pay system previously or currently applicable to a position they have held.

Section Three: Conforming Amendments

The third section amends various existing portions of the United States Code to conform them to the provisions of section 2 of the Act.

Paragraph (1) of section 3 amends 5 U.S.C. 2102(a)(1) to expressly exclude from the competitive service those positions designated under chapter 56 as requiring the services of specially qualified scientific and technical personnel. Section 5603(g) of title 5, U.S. Code provides that any position so designated shall be considered to be in the excepted service.

Paragraph (2) of section 3 amends 5 U.S.C. 2108(3) to add the Senior Scientific and Technical Personnel Service to the list of executive services, including the SES, already excluded from the definition of the phrase "preference eligible".

Paragraph (3) of section 3 amends 5 U.S.C. 3104(a)(2) to provide that the provisions of 5 U.S.C. 3104(a)(1) do not apply to any position established under 5 U.S.C. 5603(g). Thus, positions designated as requiring the services of specially qualified scientific and technical personnel under 5 U.S.C. 5603(g) are not subject to any part of 5 U.S.C. 3104, including the limit on the maximum number of positions under 5 U.S.C. 3104(a)(1).

Paragraph (4) of section 3 amends 5 U.S.C. 3132(a)(2) to provide that any position included in an alternative personnel system established under chapter 56 is not a Senior Executive Service position. Thus, if an SES position is converted to a position under an alternative personnel system, it is no longer an SES position. If an agency chooses to do so, it may include such positions in an SSTPS established by an agency and approved by OPM.

Paragraph (5) of section 3 amends 5 U.S.C. 4303(f) to provide that, for an employee serving a 3 year probationary period after initial appointment to a position covered by an alternative personnel system, reduction in pay, reduction from one pay range to another, or removal are not subject to the provisions of 5 U.S.C. 4303. The listed personnel actions could result if an employee failed to satisfactorily complete the 3 year probationary period required by 5 U.S.C. 5603(j).

The exclusion of probationers from the provisions of 5 U.S.C. 4303 is consistent with existing language in 5 U.S.C. 4303(f) excluding other Federal probationers from the provisions of 5 U.S.C. 4303.

Paragraph (6) of section 3 provides that chapter 45 of title 5 of the U.S. Code is not applicable to scientific and technical personnel under alternative personnel management systems. Rather, special awards and performance recognition will be provided to these employees under the authority of chapter 56. The provisions and terminology of chapter 45 are not consistent with the concept of performance-based recognition under chapter 56, which may include increases in basic pay as well as lump sum awards and non-monetary recognition.

Paragraph (7) of section 3 amends 5 U.S.C. 5102(c) to exclude positions covered by alternative personnel systems from the position classification provisions of 5 U.S.C. 51. Thus, positions included under alternative personnel management systems would not be subject to classification standards established for the General Schedule. However, alternative personnel system job evaluation, salary structure, and compensation provisions will be subject to OPM requirements established pursuant to 5 U.S.C. 5603(b).

Paragraph (8) of section 3 amends 5 U.S.C. 5363 by adding a paragraph which provides that pay retention for employees covered by alternative personnel systems must be as provided under OPM regulations. Thus, the pay retention provisions of 5 U.S.C. 5363 are not applicable to alternative personnel systems established pursuant to this Act. Since chapter 51 of title 5 of the U.S. Code is not applicable to alternative personnel systems, the grade and pay retention provisions of subchapter VI of chapter 53 of title 5 are also not applicable to employees under alternative personnel systems.

Paragraph (9) of section 3 amends 5 U.S.C. 5373 to exclude positions covered by alternative personnel systems from the provisions of that section. Otherwise, section 5373 could operate to limit the maximum rate of basic pay under an alternative personnel management system to the maximum rate for GS-18. Maximum pay rates for individuals employed under alternative personnel systems are provided in 5 U.S.C. 5603(e) and (g).

Paragraph (10) of section 3 adds chapter 56 to the table of chapters for part III of title 5 of the United States Code.

Paragraph (11) of section 3 amends 5 U.S.C. 7501(1) to state that employees outside the competitive service under alternative personnel systems are not covered by subchapter I of chapter 75 of title 5 of the U.S. Code after completion of 1 year of current continuous employment. This means that employees in the excepted service pursuant to 5 U.S.C. 5603(g) will be covered by subchapter I of chapter 75 only after satisfactory completion of a 3 year probationary period after initial appointment. A 3 year probationary period is required by 5 U.S.C. 5603(j).

Paragraphs (12) and (13) of section 3 amend 5 U.S.C. 7511(a) and (b) to provide that employees who are serving a probationary period after initial appointment pursuant to chapter 56 are not covered by the provisions of subchapter II of chapter 75 of title 5 of the U.S. Code. Since the term probationary period has not been previously used with regard to excepted service employment, a reference to probationary periods under chapter 56 has been added to 5 U.S.C. 7511(a)(1)(B). The result is that chapter 56 employees will not be covered by subchapter II of chapter 75 throughout the 3 year probationary period required by 5 U.S.C. 5603(j).

Section 4: General Accounting Office Review and Evaluation

The fourth section requires the U.S. General Accounting Office (GAO) to evaluate alternative Federal scientific and technical personnel management systems. GAO is required to prepare a report which must include an evaluation of the implementation and operation of the systems. The report must include cost comparisons of the alternative personnel systems with personnel systems

otherwise provided by law. The report must also include an assessment of the acceptability of the systems to managers and employees and shall include any recommendations GAO has for changes or improvements in the systems.

If more feasible or practical, GAO may evaluate a representative sampling of alternative personnel management systems. It is not intended that GAO be limited to one report. The required report must be transmitted to Congress and to OPM 5 years after the effective date of this Act.

Section 5: Effective Date

The fifth section provides that this Act shall take effect on the date of enactment. The Office of Personnel Management is required by 5 U.S.C. 5604(a) to prescribe regulations within 6 months of enactment of this Act to carry out the purpose of chapter 56. It is intended that after final OPM regulations have been published in the Federal Register, agencies may submit alternative scientific and technical personnel management systems to OPM for review and approval. It is anticipated that OPM will require those agencies wishing to initially submit alternative personnel management systems for approval to do so within 6 months after the date of publication of final OPM regulations implementing chapter 56. Alternative personnel management systems may also be submitted for approval at a later time as provided by OPM regulations.